(3)

C.S.100L

IN THE HIGH COURT OF JUDICATURE, AT-BILASPUR(C.G.)

WRIT PETITION No. 2466 **OF 2004**

BETWEEN

PETITIONER : RAJENDRA SINGH THAKUR
AGED- 46 YEARS,
SON OF SHRI MANNU SINGH THAKUR,
POSTED AS- P.T.I.,
AT- GOVT. GIRLS H.S.SCHOOL,
KANKER,
RESIDENT OF KANKER,
DISTRICT-KANKER (C.G.)

P. R No. 24541/Cg
Presented by Shri R.S. Thakur
dated 1-8-04

VERSUS

RESPONDENTS : **1.**STATE OF CHHATTISGARH
THROUGH – THE SECRETARY
TRIBAL AND SCHEDULE CASTE
DEVELOPMENT DEPARTMENT
MANTRALAY, D.K.S. BHAWAN,
RAIPUR.

2. THE COMMISSIONER,
TRIBAL AND SCHEDULE CASTE
DEVELOPMENT, CHHATTISGARH,
RAIPUR.

3. THE ASSISTANT COMMISSIONER,
TRIBAL DEVELOPMENT, JAGDALPUR.

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Clerk to A. G. Bilaspur

WRIT PETITION UNDER ARTICLE- 226 & 227 OF CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF MANDAMUS, PROHIBITION, SUITABLE DIRECTION OR DIRECTIONS, ORDER OR ORDERS

(26) AFR

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. 2466 सन् 2004

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	19/01/2005 - Shri R.S. Patel learned counsel for the petitioner. Shri Satish Gupta, Dy Govt. Advocate, for the State/respondents, on advance copy. Heard. By the instant writ petition filed under Article 226/227 of the Constitution of India, the petitioner has challenged the legality, validity and propriety of the order dated 15/12/2003 (Annexure-P/1) passed by respondent No.2 in exercise of the powers conferred for review under Rule 29 of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966. Learned counsel appearing for the petitioner submits that at the relevant time, the petitioner was working as P.T.I. in Govt. Boys Higher Secondary School, Charama, district Bastar, (C.G.). He remained absent from his duties from 08/07/1991 for a very long period (about three years). On the aforesaid act, the disciplinary proceeding was started against him and in the said disciplinary proceeding, notices along with charge-sheet were issued against the petitioner on 14/10/1993. It is an admitted position that even after the service of aforesaid notice and the charge-sheet, the petitioner did not file any reply to the same and had not participated in the proceedings. Thereafter enquiry was ordered and after the enquiry, the disciplinary authority, after necessary compliance of the rules, passed the punishment order dated 21/06/1999 (Annexure-P/4). According to the	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

said punishment order three annual increments with cumulative effect were stopped and the period of absence was directed to be treated as *dies non* for the purposes of pensionery benefits etc.. It is also an admitted position that the petitioner did not file any appeal against the said order of punishment and he filed a review petition. Respondent No.2 after entertaining his review petition passed the impugned order dated 15/12/2003 and dismissed the same assigning various reasons. The reviewing authority took notice of this fact that even after the show cause notice dated 14/10/1993, the petitioner did not appear before the disciplinary authority and thereafter when a representation was sought after holding him guilty, the petitioner did not file any representation and then only the impugned order of punishment was passed against him. Learned counsel further submits that the orders passed by the disciplinary authority as well as by the reviewing authority are not in accordance with law and the same may be set aside.

I have gone through the orders passed by the authorities concerned.

In the opinion of this Court, it is not a fit case in which the Court can exercise the power under Article 227 of the Constitution of India. The Apex Court while dealing with the case in the matter of **Estralla Rubber Vs. Dass Estate (P) Ltd.** reported in **(2001) 8 SCC 97** has laid down the principle that the exercise of power under Article 227 of the Constitution of India involves a duty on the high Court to keep inferior courts and tribunals within the bounds of their authority and to see that

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 3 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

they do the duty expected or required of them in a legal manner. It has also been held that the High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. In fact, the exercise of the power is restricted to the cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice. It is also to be kept in mind that the High Court while acting under this Article cannot exercise its power as an appellate Court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the fact of the record.

The reference may also be made to a decision of the Apex Court in the matter of **Sugarbai M. Siddiq and others Vs. Ramesh S. Hankare** reported in **(2001) 8 SCC 477** in which the Apex Court has held that in an application under Article 227 of the Constitution, the High Court has to see whether the lower court/tribunal has jurisdiction to deal with the matter and if so, whether the impugned order is vitiated by procedural irregularity; in other words, the Court is concerned not with the decision but with the decision-making process only.

Applying these principles of law in the present case, I do not find any reason to interfere with the orders passed by the reviewing authority or the disciplinary authority particularly in the facts and circumstances of the case when the petitioner did not turn up even to file his reply before the disciplinary authority for two times firstly at the time of issuance of show cause notice and secondly at the time of

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	imposition of punishment. The petition has no merit and therefore the same is dismissed at the admission stage itself. Sd/- Sunil Kumar Sinha Judge	